
TITLE 312 NATURAL RESOURCES COMMISSION

Emergency Rule
LSA Document #12-453(E)

DIGEST

Temporarily adds noncode provisions to establish a process by which a person may seek dual review and action by the Department of Natural Resources, Division of Historic Preservation and Archaeology, for a project that is subject potentially to both 16 U.S.C. 470f and [IC 14-21-1-18](#) and to provide that the Division Director may issue a letter of clearance for a qualified dual review project, but any member of the Historic Preservation Review Board may require submission of a project to the Review Board. Effective August 1, 2012.

SECTION 1. (a) This document governs a proposal for a project that requires review by the division of historic preservation and archaeology of the department of natural resources, if the project is subject potentially to both 16 U.S.C. 470f and [IC 14-21-1-18](#). The document is supplemental to [312 IAC 20-4](#).

(b) A person may submit a proposal to the division for a project that is subject to review by the division under 16 U.S.C. 470f and [IC 14-21-1-18](#).

(c) A person that wishes to submit a proposal under this document must provide a transmittal letter to the division with "Dual Review Project" in the subject line.

(d) Upon receipt of a transmittal letter, the division shall conduct a review that satisfies both:

- (1) 16 U.S.C. 470f and 36 CFR 800; and**
- (2) [IC 14-21-1-18](#) and this rule *[document]*.**

(e) As soon as practicable, the division shall acknowledge to the person its receipt of the transmittal letter. The acknowledgment shall state the division would review the information submitted under the authorities referenced in subsection (d). In addition to any notification required under 16 U.S.C. 470f and 36 CFR 800, the division shall provide notification of the commencement of a dual review to the following:

- (1) Interested persons.**
- (2) Members of the review board.**
- (3) By posting on the division's website.**

(f) The division director shall issue a letter of clearance for a project and exempt the person from obtaining a certificate of approval under [IC 14-21-1-18](#) if a submission under this document results:

- (1) in a finding under 36 CFR 800 of no historic properties affected or no adverse effect on historic properties; and**
- (2) the Indiana state historic preservation officer concurs in the finding.**

(g) If a submission under this document results in a finding of adverse effect on historic properties under 36 CFR 800, and a memorandum of agreement is executed under 36 CFR 800, the division director shall consider the terms of the memorandum of agreement. If the division director concludes the objectives and purposes of [IC 14-21-1-18](#) *[sic]* have been achieved, the division director shall issue a letter of clearance under this document and exempt the person from obtaining a certificate of approval under [IC 14-21-1-18](#).

(h) If the Indiana department of transportation makes a submission for a project involving a bridge covered by the July 17, 2006, "Programmatic Agreement among the Federal Highway Administration, the Indiana Department of Transportation, the Indiana State Historic Preservation Office, and the Advisory Council for Historic Preservation Regarding the Management and Preservation of Indiana's Historic Bridges", and a finding of adverse effect on historic properties results under 36 CFR 800, the division director shall consider the mitigations prescribed for the adverse effects under the programmatic agreement. If the division director concludes the objectives and purposes of [IC 14-21-1-18](#) *[sic]* are achieved, the division director shall issue a letter of clearance under this document and exempt the person from obtaining a certificate of approval under [IC 14-21-1-18](#).

(i) The division director shall provide notice under [IC 4-21.5-3-5](#) to interested persons and members of the review board of the intention to issue a letter of clearance under subsection (f) through subsection (h) of this document *[subsections (f) through (h)]*. Any member of the public may request to be placed on a

list of interested persons maintained by the division. Any member of the review board may request review by the review board for the purpose of acting upon a certificate of approval for the project. If a request for review is made under this subsection, the division shall place the completed application on the agenda of the next meeting of the review board for a determination.

(j) If a dual review initiated under this document results in a finding of adverse effect on historic properties under 36 CFR 800, and a memorandum of agreement is not executed, the person making the submission shall obtain a certificate of approval regarding the project from the review board under [312 IAC 20-4-13](#) before taking action that would alter the historic significance or character of the site.

(k) In addition to any remedy under 16 U.S.C. 470 and 36 CFR 800, the department may initiate an enforcement action under [IC 14](#) to achieve compliance with a memorandum of agreement that is subject to this document.

(l) A determination under this document is subject to administrative review by the commission under [IC 4-21.5](#), [IC 14-10-2](#), and [312 IAC 3-1](#) with respect to any:

- (1) letter of clearance;
- (2) certificate of approval; or
- (3) enforcement action.

SECTION 2. This document takes effect on August 1, 2012.

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Filed with Publisher: July 30, 2012, 10:01 a.m.

Documents Incorporated by Reference: 16 U.S.C. 470f; 36 CFR 800; Programmatic Agreement among the Federal Highway Administration, the Indiana Department of Transportation, the Indiana State Historic Preservation Office, and the Advisory Council for Historic Preservation Regarding the Management and Preservation of Indiana's Historic Bridges, July 17, 2006

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